IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

REVIEW PETITION (ST) NO.16703 OF 2005

IN

WRIT PETITION NO.2367 OF 2005

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Shri Dattu Gangaram Aher
and anr. ...Petitioners

v/s.

Tata Motors Limited & Ors. ...Respondents

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Dr.A.K. Barthakur for the Petitioners.

Mr.A.K.Abhyankar with Mr.P.S.Dani with Mr.H.N.Vakil i/b M/s.Mulla & Mulla & C.B.C. for the Respondents.

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CORAM: D.K.DESHMUKH, J.

DATED: 22nd March, 2006

P.C.:

1. The Appellants, who are Respondents in Writ Petition No.2367 of 2005, seeks review of the order by which the court admitted the petition filed by the Petitioner for final hearing and confirmed the ad-interim order.

2. That petition is directed against the order passed by the trial court holding that it has jurisdiction to try the suit. The suit was filed by the present Appellants for declaration that the award made by the Special Land Acquisition Officer in respect of suit property is null and void and is not binding on them. The Plaintiffs/Appellants also seeks a declaration that the Defendant No.2/Pimpri Chinchwad New Town Development Authority could not have validly allotted that land in favour of Defendant No.1/ Tata Motors Limited, which is the Petitioner in Writ Petition No.2367 of 2005. In short, in the suit the Appellant challenges compulsory acquisition of the land. The trial court has held that it has the jurisdiction to entertain the suit. In the order dated 4th May, 2005, whereby

ad-interim order passed in the petition has been confirmed, this court had noted that two judgments of the Supreme Court, one in the case of State of Bihar v/s. Dhirendra Kumar & ors., AIR 1995 SC 1955 and the other in the case of Laxmi Chand and ors. v/s. Gram Panchayat, Kararia and ors., AIR 1996 SC 523 were relied on before the trial court, but the trial court has not given any reason why despite observations made by the Supreme Court in these two judgments that a civil suit challenging the compulsory acquisition of land is not maintainable, the trial court holds that it has jurisdiction to entertain the suit. This court has also observed that the trial court had not only ignored the judgments of the Supreme Court which were cited before it, but has referred to observations made by the civil court in a judgment against which the appeal is pending before this Court. The court in the detailed order dated 4th May, 2005 has indicated as to why the trial court prima facie appears not to be justified in referring to the observations made by the civil court and for these reasons basically the petition was admitted for final hearing and as the court found prima facie that the civil court does not have the jurisdiction to entertain the suit, further proceedings in the suit are stayed.

3. Review of those orders is sought on the grounds that (i) remedy of filing a revision application against the same order of the trial court was available, (ii) there was a delay in filing the petition and (iii) that an error in the order of the trial court cannot be termed as an error apparent on the face of the record. For that purpose reliance is placed on following judgments:

i) Satyanarayan Laxminarayan Hegde and ors, v/s. Mallikarjun Bhavanappa Tirumale, AIR 1960 SC 137;

ii) Kaushalya Devi and ors. v/s. Bachittar Singh and ors. v/s. Bachittar Singh and ors, AIR 1960 SC 1168;

iii) The Selection Committee for Admission to the Medical and Dental College, Bangalore v/s. M.P.Nagaraj, AIR 1972 Mysore 44;

(iv) The Nalagarh Dehati Co.operative Transport Society Ltd., Nalagarh v/s. Beli Ram etc. AIR 1981 Himachal Pradesh 1;

as also the judgment of the Supreme Court in the case of

(v) Surya Dev Rai v/s. Ram Chander Rai, (2003) 6 SCC 675;

4. In my opinion , the High Court has not made any final order. What has been done is that the petition has been admitted for final hearing on the the High Court finding that the Petitioner has made out a prima facie case and as the High Court found prima facie that the civil court does not have the jurisdiction to entertain the suit, in view of the two judgments of the Supreme Court, further proceedings in the suit have been stayed. The question that there are latches in filing the petition , that there is alternate remedy and therefore this court should not exercise the writ jurisdiction, that there is no error apparent on the face of the record in the order impugned and therefore this court should not exercise its supervisory jurisdiction are the question which can be raised at the final hearing of the petition. It was also urged that because the Constitution Bench of the Supreme Court in previous judgment have taken a view that a civil suit challenging compulsory

acquisition of the land can be filed, two judgments of the Supreme Court which have been referred to above and which are cited before the trial court are per-incurrium. In my opinion, if the finding that the civil suit filed by the Appellant is maintainable can be recorded only after recording a finding that the two judgments of the Supreme Court are per-incurrium. In my opinion, it would be an appropriate case for the High Court to hear in detail and High Court would not be justified in such a situation shutting out the inquiry at limini stage.

5. For all these reasons, therefore, I find that there is no reason to entertain this Review Application. Review application is, therefore, disposed of.

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